



## The Black Law Students Association

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### **“N\_\_\_\_\_” and “B\_\_\_\_\_”: The Inexcusable Usage of \_\_\_\_\_ on a UIC John Marshall Law School Civil Procedure II Exam**

*“The N-word is not just a word. It is not neatly contained in a racist past, a relic of slavery. Fundamentally the N-word is an idea disguised as a word. That Black people are intellectually, biologically, and immutably inferior to White people. That inferiority means that the injustice we suffer and inequality we endure is essentially our own fault.”*

-- Elizabeth Stordeur Pryor

On December 2, 2020, UIC John Marshall Law students sat for a Civil Procedure II (JD-421-0) final examination instructed and administered by Professor Jason Kilborn, a white male. The question at-issue contained a racial pejorative summarized as follows: “‘n\_\_\_\_\_’ and ‘b\_\_\_\_\_’ (profane expressions for African Americans and women).” The fact pattern involved an employment discrimination case where the call of the question was whether or not the information found was work product.

The slur shocked students, created a momentousness distraction, and caused unnecessary distress and anxiety for those taking the exam. Considering the subject matter, and the call of the question, the use of the “n\_\_\_\_\_” and “b\_\_\_\_\_” was certainly unwarranted as it did not serve any educational purpose. The question was culturally insensitive and tone deaf. It lacked basic civility and respect for the student body, especially considering our social justice efforts this year. It is incumbent on this administration to hold Professor Kilborn accountable for his actions.

### **The History and Violence the N-word Represents**

The N-word stems from a dark and deeply rooted history of hate, oppression, and violence against Black people. Today, this racial slur is the *most* hurtful, dangerous, threatening, and vile word that can be used against Black people. It triggers pain, anxiety, and distress. The word is tied to the notion that Black people are not human beings. This scathing insult torments Black people and brings to the surface the brutal reality of the past that has haunted the Black community for centuries. Its use is a doctrine of inferiority. It blatantly shackles us to America’s dreadful history and creeps into the present where we are thought of as less than human. It represents one of the worst atrocities in our history and there is no justification that makes this word permissible, *period*. The unnecessary use of the N-word in an academic setting is traumatizing and distracting, especially during an already stressful exam, in a time of civil unrest and a catastrophic pandemic.

The use of the N-word itself is racist. It connects Black students to their ancestors in a gut-wrenching way. It is poisonous and inflicts deep rooted trauma. Pain that lingers, pain that aches, and rattles mental stability. The visual of the N-word on Professor Kilborn's exam was mental terrorism. The use of this vile and repugnant word, even in an implied state was utterly disgraceful and shines a bright light on the hidden biases and cultural insensitivities that permeate into the walls of UIC John Marshall Law School.

### **Cultural Insensitivity**

The insolence that Professor Kilborn displayed is unacceptable. As leaders of affinity groups, we have stressed the importance of proper anti-racist trainings and practices for the administration, faculty, and staff to prevent the type of culturally insensitive behavior that he demonstrated. If an active culture of inclusion existed on campus, professors would think critically about the language used on all materials distributed to students. As students, we are taught to ask ourselves, "What are the implications of the words on this document, or the words I am about to speak?" Professors and administrators should be held to the same standard.

Under existing policies, marginalized communities are forced to react after facing acts of aggression and/or discrimination. The current precedent of unaccountability negatively affects the learning environment of students and aspiring attorneys. There are long lasting ramifications on the future of the legal field where oppressive and unconscionable acts by community members are not held accountable. To prevent these sorts of problems in the future, all UIC John Marshall Law School community members must think critically about all of their actions and words with an anti-racist framework in mind. As a school that prides itself on diversity, UIC John Marshall Law School must prioritize being zealous advocates for justice and be at the forefront of anti-racist change in higher education.

### **Psychological Impact and Mental Trauma to Students**

The N-word is a derogatory defamation, inextricably linked with violence, cruelty, and the degradation of Black psyches. As stated by Harvard law professor Randall Kennedy, "\*\*\*\*\* is and has long been the most socially consequential racial insult." The intentional derogatory terms n\_\_\_\_ and b\_\_\_\_ - used in combination by Professor Kilborn - illustrate the poisonous nature those terms still have on Black people.

When asked how reading those words while trying to complete a law school exam impacted her, one student stated, "I was completely *flustered* by the question and had to take several moments to gather myself prior to proceeding with the exam." The student added, "I had to seek counsel immediately after the exam to calm myself from what I had just experienced."

Another student stated that upon reading "n\_\_\_\_" "b\_\_\_\_" on the exam she became "incredibly upset" and immediately began to experience "heart palpitations."

One Black student was left in a hopeless mental state after learning about the words implicated on the exam. He explained that he already felt isolated and disconnected from the



UIC John Marshall Law School community due to prior racially insensitive events overlooked by the institution, including a previous interaction with Professor Kilborn. He added, reading “n\_\_\_\_\_” “b\_\_\_\_\_” was triggering, and made him feel as if he “no longer belonged at the law school.”

Similarly, another Black student stated “I would be extremely uncomfortable taking another one of Professor Kilborn's classes.”

Professor Kilborn asserts his actions were to provide “context that aspiring lawyers would most likely actually encounter in the real world of federal litigation.” A student in one of Professor Kilborn’s previous courses said this racial slur did not appear on their earlier exam - proving real world context can be provided without the use of derogatory language. One student who sat for his exam questioned Professor Kilborn’s intent, asking, “given the events of George Floyd and the continued racial unrest in our nation, why would [Professor] Kilborn intentionally force this indignity onto his African American students?”

The questions that remain for UIC Faculty and Administration are: are you aware of the ongoing racial experiences of your Black students, and if so; what are you doing to effectuate systemic change in our community?

The offensive nature expands beyond the experiences of Black students. Their allies are deeply saddened by the lack of decency the exam question exhibits. They too understand the implications of the slur and were distraught to witness a professor utilizing such pejorative verbiage. Black students and their allies understand that racism hurts the community as a whole, and those that perpetuate it must be held accountable.

### **Lack of Respect, Decency, and Civility**

The language used lacked respect, human decency, and civility during one of the most stressful times of the semester and of our lives. It is inexcusable, unacceptable, and culturally inappropriate to use insensitive language as context to test civil procedure concepts. The language utilized on this final exam was not necessary to create a realistic fact pattern of the work product doctrine. We must recognize the magnitude of the N-word and the impact it has on the Black community. Everyone must be socially responsible. Professors must be considerate of the experiences and injustices that Black people have faced for decades in this country.

This year in particular has been very difficult on the Black community. The classroom is supposed to be a safe space from the oppression and discrimination that Black students encounter on a daily basis. That is not the case in Professor Kilborn’s classroom. Professor Kilborn’s final reminded students of these experiences. It triggered Black students and their allies, and it showed them that this language and racism is inescapable.

Professor Kilborn portrayed himself as a culturally unaware and insensitive professor as he intentionally and deliberately elected to place the N-word and the b-word in his question. A careful and educational review of the language used in the question would have brought into consideration the problematic history of the word and its detrimental and

lingering effects for the Black community. Mandating effective cultural sensitivity training would encourage Professor Kilborn and other professors to reflect and foresee the effects of including these vulgar and traumatizing words.

Using these words is appalling. The pernicious language in conjunction with reports of numerous other off-putting interactions between Professor Kilborn and students has left Black students and their allies distraught, mentally exhausted, and overwhelmed.

Biased and racist experiences at UIC John Marshall Law School are not only increasing, they are escalating. There is a deep-rooted issue at-hand when a law professor in an entrusted position of power is comfortable enough to include the N-word and the b-word on a civil procedure final exam. This is a cultural moment for our campus. We must work to ensure we come out on the right side of history and address the systemic problems at this institution.

### **What Must Be Done**

Professors write their final exams meticulously, carefully, and deliberately each semester, and there is no place or situation in our school or education for “n \_\_\_\_” “b \_\_\_\_” to appear. This was not an accident.

We demand action and actual change.

- Professor Kilborn should immediately step down as the chair of the academic affairs committee and from all other committee appointments he holds. Someone who exhibits such poor judgment should not be able to hold an additional position of power. Specifically, one with influence over academic affairs.
- The school must ensure that all mandatory courses are taught by multiple professors - empowering students with the opportunity to take classes from professors without a history of bias.
- As requested in BLSA’s demand letter on June 5, 2020 and stated herein, we continue to advocate strongly for mandatory cultural sensitivity training for faculty and staff.
- The school must implement an unambiguous policy with guidelines prohibiting offensive and culturally insensitive language in the classroom by professors. We expect to see this policy implemented by the Spring 2021 Semester, starting January 11, 2021.
- The Administration must plan an open dialogue event with Professor Kilborn during the Spring 2021 Semester. Preferably moderated by a professor at UIC John Marshall Law School.